

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 2220 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE D.G.KARIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
1 to 5 No.

VASUDEV NABHUBHAI

Versus

JASODABEN SAKARCHAND

Appearance:

MR KC SHAH for Petitioner

MR HB SHAH & Mr.ADIL MEHTA,ADVOCATES for Respondent.

CORAM : MR.JUSTICE D.G.KARIA

Date of decision: 20/03/96

ORAL JUDGEMENT

This Revision Application is directed against the concurrent judgments of the trial Court and the lower Appellate Bench of the Small Causes Court, Ahmedabad,

The petitioner is the original tenant of the land bearing survey No.339/110, situated at Prabhunagar Colony at Dani Limda in Ahmedabad. The respondent-landlord filed H.R.P. Suit No.1712/81 against the petitioner for recovery of possession of the suit premises and Rs.2809.48 ps. towards arrears of rent and mesne profits of the suit premises for the period from 15.3.1977 to 10.7.1979 and the notice charges. It was alleged that the defendant was a tenant in arrears of rent for more than six months and as such the notice dated 23.1.1979 demanding arrears of rent was sent to the defendant, but the defendant refused to accept the same. The plaintiff-landlord had sent a notice again on 21.2.1979 by Registered Post A.D. and Under Certificate of Posting as well. The defendant also refused to accept the notice sent by Registered Post A.D. However, the defendant gave a reply to the notice on 8.3.1979 contending that monthly rent of the suit premises was Rs.50/- and not Rs.100/-. The trial Court by the judgment and decree dated 26.11.1981 decreed the suit directing the defendant to hand over the vacant possession of the suit premises together with Rs.2784.48 ps. towards rent and mesne profits from 15.3.1977 to 10.7.1979. The trial Court also directed that the plaintiff was entitled to recover mesne profits at the rate of Rs.100/-per month from 10.7.1979 till the possession of the premises was handed over to the plaintiff. The standard rent of the suit premises was fixed at Rs.100/- per month. It was also decreed that the defendant-petitioner was liable to pay the taxes and electric burning charges.

The defendant-petitioner being aggrieved by the aforesaid judgment and decree of the Small Causes Court preferred HRP Civil Appeal No.46/82 before the Appellate Bench of the Small Causes Court, Ahmedabad. The learned Judges of the Bench by judgment and decree dated December 9,1982 dismissed the appeal of the defendant-petitioner, confirming the judgment and decree of the trial Court. Hence the present appeal.

Both the Courts below found the petitioner-tenant to be in arrears of rent for more than six months and passed and confirmed the decree of eviction under section 12(3)(b) of the Bombay Rent Act. The trial Court determined the standard rent at the rate of Rs.100/- per month plus taxes and electric burning charges in respect of the suit premises. While admitting the Revision Application, this Court had granted ad interim stay of the execution of the impugned decree of eviction on usual terms, meaning thereby that the defendant-tenant shall

pay the arrears of rent and also will continue to pay the amount of rent till disposal of the revision. However, the defendant-tenant has also committed default in paying the arrears and the amount of rent of rent. It appears from the record that the learned Advocate for the respondent filed a note on 18.1.1984 contending inter alia that the petitioner-tenant did not deposit rent and has been in arrears of rent of a large sum of money and so the ad interim stay be vacated. This Court, by the order dated 10.2.1984, vacated the ad interim stay, as the petitioner had committed default in respect of payment of the arrears of rent.

Before the lower appellate Court, the same situation had arisen as the petitioner-defendant failed to deposit the sum of Rs.4366/-, pursuant to the order passed by the Appellate Bench of the Small Causes Court on 7.10.1982. Eventually, the eviction-decree was passed under section 12(3)(b) of the Bombay Rent Act.

Mr.K.C.Shah, learned Advocate for the Petitioner, is not in a position to make the statement that the petitioner-tenant has paid due amount of arrears of due amount and has continued thereafter to deposit the amount of rent. By passage of time, the decree would have been executed. Thus, there is no substance in the Revision Application.

In the result, the Revision Application is rejected. Rule discharged.
